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**FILED**

DISTRICT COURT OF GUAM

JUN 20 2007

MARY L.M. MORAN  
CLERK OF COURT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF GUAM**

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

KITAMICHY WILLIANDER, )

Defendant. )

CRIMINAL CASE NO. 07-00010

**UNITED STATES' RESPONSE  
TO DEFENDANT'S OBJECTION  
TO PRESENTENCE REPORT**

The draft presentence report in this matter was filed May 17, 2007. At paragraph 21 it gave defendant a 16-level increase because he was deported from the United States after a conviction for a crime of violence. On June 14, 2007, defendant filed a response objecting to this increase. He correctly cited United States v. Narvaez-Gomez, 2007 WL 1614778 (9<sup>th</sup> Cir. 2007), which in turn cites Fernandez-Ruiz v. Gonzales, 466 F.3d 1121 (9<sup>th</sup> Cir. 2006) (en banc), limiting categorical crimes of violence, for enhancement purposes, to those which were committed intentionally, as opposed to recklessly or with gross negligence.

In this case, it is not necessary to delve further into the Superior Court record to determine whether defendant committed aggravated assault intentionally. Defendant pled guilty to Count II, which charged that he "did recklessly cause and attempted to cause serious bodily

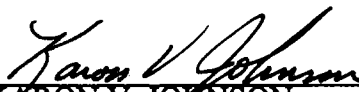
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1 injury to another ... " Thus, because his *men rea* was reckless, as opposed to intentional, the  
2 government agrees that the 16-level enhancement pursuant to 2L1.2(b)(1)(A) is not appropriate.

3 Respectfully submitted this 20th day of June, 2007.

4 LEONARDO M. RAPADAS  
5 United States Attorney  
6 Districts of Guam and NMI

7 By:

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